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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
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2015 JUL 27 P 4: 25
AZ CORP COMMISSION
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In the matter of:

CONCORDIA FINANCING COMPANY, LTD,
a/k/a "CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY SERVICES,
LLC,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

Docket No. S-20906A-14-0063

**ER RESPONDENTS' MOTION IN
LIMINE NUMBER TWO:
OBJECTION TO PROPOSED
EXHIBIT S-177.**

Arizona Corporation Commission

DOCKETED

JUL 27 2015

DOCKETED BY

MB

SNELL & WILMER
LLP
ONE ARIZONA CENTER
400 E. VAN BUREN, SUITE 1900
PHOENIX, ARIZONA 85004-2202

Respondents ER Financial and Advisory Services, LLC¹, Lance Michael Bersch, David John Wanzek, and Linda Wanzek (collectively, the "ER Respondents") object to the Securities Division's proposed Exhibit S-177, and the ER Respondents move that the Administrative Law Judge enter an order sustaining the objection and directing that the proposed exhibit not be admitted into evidence. The Commission's Rules of Practice and Procedure provide that:

- "motions shall conform insofar as practicable with the Rules of Civil Procedure" A.A.C. R14-3-106(K)
- "Rules of evidence before the Superior Court of the state of Arizona will be generally followed but may be relaxed in the discretion of the Commission or

¹ To the extent it still exists and is capable of being named a respondent in this matter.

1 presiding officer when deviation from the technical rules of evidence will aid in
2 ascertaining the facts.” A.A.C. R14-2-109(K)

- 3 • “Any documentary evidence offered, whether in the form of exhibit or introduced
4 by reference, shall be subject to appropriate and timely objection.” A.A.C. R14-3-
5 109(L)
- 6 • “When objections are made to the admission or exclusion of evidence, the grounds
7 relied upon shall be stated briefly. The presiding officer shall rule on the
8 admissibility of all evidence.” A.A.C. R14-3-109(X).

9 Thus, the Arizona Rules of Evidence “generally” apply, but the Administrative Law Judge
10 (“ALJ”) has the discretion to permit a “deviation from the technical rules of evidence”. Further,
11 documentary evidence is subject to objection, and the ALJ, as the presiding officer, rules on the
12 “admissibility of all evidence”.

13 The Division’s proposed Exhibit S-177 is a compilation of hearsay statements, collected
14 by various Division investigators as part of a wave of telephonic interviews conducted in March,
15 with the hearing at that time set for May. This compilation suffers from a host of deficiencies and
16 should not be admitted into evidence.

17 This compilation of hearsay is unfair. Many of the investors listed on the compilation will
18 not testify, and the ER Respondents will not have the opportunity to cross-examine them
19 regarding their out-of-court statements. Further, several Division investigators did the interviews,
20 but only one (Chief Special Investigator Gary Clapper) is scheduled to testify. Mr. Clapper
21 cannot testify to what was told to other investigators, or how they conducted the interviews, or
22 whether their interview notes are a fair summary of their conversations, or whether those notes, in
23 turn, are fairly summarized by the proposed Exhibit S-177. This exhibit piles hearsay upon
24 hearsay, and summary upon summary. Undersigned counsel is not aware of a similar exhibit ever
25 being admitted by the Commission. While the ALJ has the discretion to permit a deviation from
26 the technical rules of evidence, these objections go directly to the fairness of the exhibit, rather
27 than to technicalities.

28 Further, Arizona Rule of Evidence, Rule 1006 provides that:

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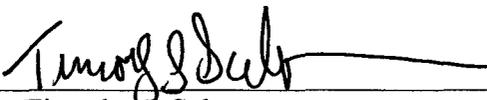
The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Thus, a summary is only admissible to prove the content of “voluminous writings, recordings, or photographs.” In contrast, here the summary is being offered to prove the content of unrecorded hearsay conversations. Proposed Exhibit S-177 is not a permissible type of summary.

There are further issues. The proposed exhibit consists of cryptic and at times misleading labels. In addition, the exhibit is incomplete, because it is not clear why some investors are listed on the exhibit and some are not. Moreover, the font on the exhibit is tiny, making it illegible.

Not only does proposed Exhibit S-177 violate rules the rules governing hearsay and summaries, it does so egregiously, piling summary upon summary and hearsay upon hearsay. The proposed exhibit is unfair, confusing, incomplete and illegible. It should not be admitted into evidence.

RESPECTFULLY SUBMITTED this 27th day of July 2015.

By 
Timothy J. Sabo
SNELL & WILMER L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, AZ 85004-2202
Phone: 602.382.6347
E-mail: tsabo@swlaw.com

and

Paul J. Roshka, Jr.
Craig Waugh
POLSINELLI, P.C.
One East Washington St., Suite 1200
Phoenix, AZ 85004-2568
Phone: 602.650.2098
Email: proshka@polsinelli.com

Attorneys for the ER Respondents

1 Original + 13 copies of the foregoing
2 filed this 27th day of July 2015, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed
8 this 27th day of July 2015, to:

9 Mark H. Preny, Esq.
10 Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 James D. Burgess, Esq.
16 Securities Division
17 Arizona Corporation Commission
18 1300 West Washington, 3rd Floor
19 Phoenix, Arizona 85007

20 Alan S. Baskin, Esq.
21 David E. Wood, Esq.
22 Baskin Richards, PLC
23 2901 North Central Avenue, Suite 1150
24 Phoenix, AZ 85012
25 *Attorneys for Concordia Finance Company, LTD.*

26
27 By *Jacklyn Howard*

28 22173762.1